

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PATRICK J. COURTNEY  
2801 N. 89<sup>th</sup> Street  
Milwaukee, WI 53222,

Case No.: 22-116

Plaintiff,

vs.

UNITED STATES OF AMERICA  
c/o Acting U.S. Attorney Timothy M. O'Shea  
United States Attorney's Office  
Western District of Wisconsin  
222 West Washington Avenue, Suite 700  
Madison, WI 53703,

Defendant,

and

COMPCARE HEALTH SERVICES  
d/b/a BLUE CROSS BLUE SHIELD OF WISCONSIN, INC.  
c/o Registered Agent CT Corporation System  
301 S. Bedford Street, Suite 1  
Madison, WI 53703,

Subrogated Defendant.

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**COMPLAINT**

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Plaintiff, by his attorneys, Habush Habush & Rottier S.C., by David Blinka, hereby alleges the following as a complaint against the defendants.

**THE PARTIES**

1. The plaintiff, Patrick J. Courtney, is an adult resident of the State of Wisconsin whose address is 2801 N. 89th Street, Milwaukee, Wisconsin 53222.

2. The defendant, United States of America, through its designated agency, the United States Postal Service, was at all times material hereto, the owner and insurer of a United States postal truck, specifically a 2000 Ford Utility Master, operated by Ashley Pasquale.

3. The subrogated defendant, Compcare Health Services d/b/a Blue Cross Blue Shield of Wisconsin, Inc., is a domestic insurance company, licensed to do business in the state of Wisconsin, with principal offices located at N17 W24340 Riverwood Road, Waukesha, Wisconsin 53188, and is a proper party to this action pursuant to the Federal Rules of Civil Procedure and Wis. Stat. §803.02 by virtue of its payment of medical expenses on behalf of the plaintiff, Patrick J. Courtney.

#### **JURISDICTION AND VENUE**

4. This is an action arising under the Federal Tort Claims Act (hereafter, "FTCA"), 28 U.S.C. § 2671 *et. seq.*

5. The plaintiff, Patrick J. Courtney, has complied with Section 2675(a) of the FTCA and exhausted his administrative remedies before filing this lawsuit.

6. By March 15, 2021, the Defendant, United States of America, received written notice of Plaintiff's claims for money damages by having received a Standard Form 95 Claim for Damage, Injury or Death at the United States Postal Service, Law Department, National Tort Center located at 1720 Market Street, Room 2400, St. Louis, MO 63155-9948.

7. Pursuant to 28 U.S.C. § 2675(a), the United States of America, through the United States Postal Service, having acknowledged Plaintiff's claim for damages, did not make a final disposition of the claim within six months, which shall be deemed a final denial authorizing Plaintiff to file this lawsuit.

8. This Court has jurisdiction under the Federal Tort Claims Act, 28 U.S.C. § 1331, 28 U.S.C. § 1402, and the provisions of 28 U.S.C. § 1346(b)(1).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred within this Court's judicial district, specifically, in Fitchburg, Wisconsin 53711.

### **GENERAL NEGLIGENCE**

10. The plaintiff realleges and incorporates herein by reference all of the allegations of this complaint, paragraphs 1 through 9.

11. On May 18, 2019, at approximately 5:20 p.m., the plaintiff, Patrick J. Courtney, was traveling on his bicycle, northbound on the right shoulder of Syene Road located in Fitchburg, Wisconsin, when a United States postal truck, operated by the defendant, Ashley Pasquale, pulled away from a stop sign on Clayton Road leaving Patrick J. Courtney with no choice but to slam on his brakes in order to avoid a collision with the truck.

12. At the time and place described above, Ashley Pasquale, operated the U.S. postal truck negligently by failing to maintain a proper lookout, by failing to stop at the stop sign, by failing to yield the right-of-way to Patrick J. Courtney, and was otherwise negligent.

13. Ashley Pasquale's negligence was a substantial factor and proximate cause of all injuries and damages sustained by the plaintiff, Patrick J. Courtney.

14. Upon information and belief, Ashley Pasquale was operating the U.S. postal truck in the course and scope of her employment with the United States Postal Service.

15. The United States of America, through its designated agent, the United States Postal Service, is responsible for the negligent acts and omissions of their agents, servants, and employees while acting within the scope of their employment.

16. Upon information and belief, by virtue of its status as the employer of Ashley Pasquale, the United States Government, through its designated agency, the United States Postal Service, is liable to the plaintiff, Patrick J. Courtney, for all of his injuries and damages under the doctrine of *respondeat superior*.

17. The plaintiff Patrick J. Courtney, sustained severe injuries to his mind and body, specifically but not limited to a fractured right elbow.

18. The injuries sustained by plaintiff, Patrick J. Courtney, are permanent in nature.

19. The plaintiff, Patrick J. Courtney, has incurred medical expenses and will continue to incur medical expenses into the future; moreover, he has incurred damages in the nature of lost income and property losses.

#### **DEMAND FOR RELIEF**

- A. Judgement in favor of the plaintiff, Patrick J. Courtney, against the defendant, United States of America, in an amount sufficient to compensate him for all of his injuries and damages.
- B. Judgement declaring what interest, if any, the subrogated defendant, Compcare Health Services d/b/a Blue Cross Blue Shield of Wisconsin, Inc. has in the outcome of this matter.
- C. For costs and disbursements incurred in this action, and
- D. For whatever further relief the Court deems appropriate.

Dated this 3<sup>rd</sup> day of March, 2022.

HABUSH HABUSH & ROTTIER S.C.<sup>®</sup>

s/David S. Blinka

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